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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SHANNON ALYNN RAMSAY,

Plaintiff,

v.

THE STATE BAR OF CALIFORNIA, and
DOES 1 - 100 inclusive.

Defendants.

Case No. C-07-3645 RS

ANSWER TO COMPLAINT

1 Defendant The State Bar of California ("State Bar") answers plaintiff's Complaint for
2 Damages & Injunctive Relief as follows:

3 1. The State Bar admits the allegations of paragraph 1 on information and belief.

4 2. The State Bar admits that it is an administrative arm of the California Supreme
5 Court for the purpose of assisting in matters of admission and discipline of attorneys. *In re Rose*,
6 22 Cal. 4th 430, 438 (2000); Cal. Const. art. VI § 9. In that capacity, the State Bar administers
7 the California Bar Exam. To the extent any other allegations are made in paragraph 2, they are
8 denied.

9 3. The State Bar lacks sufficient information to form a belief as to the truth of the
10 allegations in this paragraph, and denies them on that basis.

11 4. The State Bar lacks sufficient information to form a belief as to the truth of the
12 allegations in this paragraph, and denies them on that basis.

13 5. The State Bar admits the allegations of paragraph 5 on information and belief.

14 6. The State Bar admits the allegations of paragraph 6 on information and belief.

15 7. Admit.

16 8. The State Bar admits that the document attached to the Complaint as Exhibit A
17 was received by the State Bar, and that the documents attached to the Complaint as Exhibit B,
18 with the exception of the February 13, 2007 letter from plaintiff to the State Bar Claims Office,
19 were sent by the State Bar to plaintiff. Those exhibits are written documents that speak for
20 themselves, and the State Bar denies any allegations inconsistent therewith.

21 9. Answering paragraph 9, the State Bar re-asserts and incorporates by reference its
22 responses to paragraphs 1-8.

23 10. Paragraph 10 consists of a legal conclusion to which no response is required. To
24 the extent a response is deemed required, Title II of the Americans with Disabilities Act, 42
25 U.S.C. §§ 12131 et seq. is a law of the United States that speaks for itself, and the State Bar
26 denies all allegations concerning its terms or meaning that are inconsistent therewith. The State
27 Bar further denies that plaintiff's legal theories in this case have merit.

28

1 11. Paragraph 11 consists of a legal conclusion to which no response is required. To
2 the extent a response is deemed required, Title II of the Americans with Disabilities Act, 42
3 U.S.C. §§ 12131 et seq. is a law of the United States that speaks for itself, and the State Bar
4 denies all allegations concerning its terms or meaning that are inconsistent therewith. The State
5 Bar further denies that plaintiff's legal theories in this case have merit.

6 12. The State Bar admits that it publishes exam passage statistics on a number of
7 metrics, including certain racial and ethnic minorities based on self-identification data provided
8 by bar applicants. The State Bar denies all other allegations in paragraph 12.

9 13. The State Bar admits that it does not publish any statistics purporting to segregate
10 out the passage rate for "disabled test takers".

11 14. The State Bar admits that plaintiff or her father have asked the State Bar to
12 publish a passage rate for "disabled" applicants, and that the State Bar has not done so. The
13 State Bar denies the remaining allegations in paragraph 14.

14 15. Denied.

15 16. The State Bar lacks sufficient information to form a belief as to the truth of the
16 allegations in this paragraph, and denies them on that basis.

17 17. The State Bar admits that prior to February 2007, it only returned graded essay
18 and performance test exam papers to test-takers who failed and asked to review those papers.
19 Since February 2007, the State Bar automatically returns graded essay and performance test
20 exam papers to all test takers who fail. Individuals who pass the bar exam do not receive copies
21 of their graded papers. The State Bar does not grade the MBE exam, does not have custody of
22 the graded MBE scantron forms, and cannot return them to anyone. The remaining allegations in
23 this paragraph are denied.

24 18. Denied.

25 19. The State Bar admits that, pursuant to her request for that accommodation, it
26 provided plaintiff with twice the normal time period to take the Bar Exam. If plaintiff did not
27 want that accommodation she could have requested less extra time beyond the minimum of three
28 days provided to all applicants. The State Bar denies the remaining allegations of paragraph 19.

1 20. The State Bar admits that plaintiff has reported the information described in her
2 letter of August 1, 2006 attached as Exhibit C to her Complaint. The State Bar lacks sufficient
3 information to form a belief as to the truth of the remaining allegations in this paragraph, and
4 denies them on that basis.

5 21. Denied.

6 22. The State Bar admits that plaintiff seeks the relief asserted in this paragraph, but
7 denies that any such relief is appropriate or legally available. The State Bar denies the remaining
8 allegations of paragraph 22.

9 23. The State Bar admits that plaintiff seeks the relief asserted in this paragraph, but
10 denies that any such relief is appropriate or legally available. The State Bar denies the remaining
11 allegations of paragraph 23.

12 24. The State Bar admits that plaintiff seeks the relief asserted in this paragraph, but
13 denies that any such relief is appropriate or legally available. The State Bar denies the remaining
14 allegations of paragraph 24.

15 25. The State Bar admits that plaintiff seeks the relief asserted in this paragraph, but
16 denies that any such relief is appropriate or legally available. The State Bar denies the remaining
17 allegations of paragraph 25.

18 26. The State Bar admits that plaintiff seeks the relief asserted in this paragraph, but
19 denies that any such relief is appropriate or legally available. The State Bar denies the remaining
20 allegations of paragraph 26.

21 27. The State Bar admits that plaintiff seeks the relief asserted in this paragraph, but
22 denies that any such relief is appropriate or legally available. The State Bar denies the remaining
23 allegations of paragraph 27.

24 28. The State Bar admits that plaintiff purports to reserve some rights in this
25 paragraph, but denies that any such rights exist, are appropriate, or are legally available. The
26 State Bar denies the remaining allegations of paragraph 28.

27 29. Answering paragraph 29, the State Bar re-asserts and incorporates by reference its
28 responses to paragraphs 1-28.

1 30. Denied.

2 31. Denied.

3 32. The State Bar admits that plaintiff seeks the relief asserted in this paragraph, but
4 denies that any such relief is appropriate or legally available. The State Bar denies the remaining
5 allegations of paragraph 32.

6 33. Answering paragraph 33, the State Bar re-asserts and incorporates by reference its
7 responses to paragraphs 1-32.

8 34. Denied.

9 35. Denied.

10 36. The State Bar admits that plaintiff seeks the relief asserted in this paragraph, but
11 denies that any such relief is appropriate or legally available. The State Bar denies the remaining
12 allegations of paragraph 36.

13 **PLAINTIFF'S PRAYER FOR RELIEF**

14 The State Bar denies every allegation contained in plaintiff's prayer for relief, paragraphs
15 1) through 5), and each of them, and specifically denies that plaintiff has been injured, or
16 threatened with injury, in any way whatsoever, or at all, and specifically denies that plaintiff is
17 entitled to any relief of any kind whatsoever. The State Bar requests the Court to enter judgment
18 against plaintiff and in the State Bar's favor, and to award the State Bar its costs of suit,
19 attorneys fees, and other proper relief.

20 **ADDITIONAL DEFENSES**

21 Without assuming any burden that it would not otherwise bear, the State Bar asserts the
22 following additional defenses:

23 **FIRST ADDITIONAL DEFENSE**

24 The Complaint and each and every cause of action contained therein fails to state a claim
25 upon which relief can be granted.

26 **SECOND ADDITIONAL DEFENSE**

27 The Complaint and each and every cause of action contained therein is barred because the
28 State Bar was justified in doing any and/or all of the acts alleged in the Complaint.

1 **THIRD ADDITIONAL DEFENSE**

2 The Complaint and each and every cause of action contained therein is barred because
3 plaintiff requested the conduct about which she now complains.

4 **FOURTH ADDITIONAL DEFENSE**

5 The Complaint and each and every cause of action contained therein is barred because
6 plaintiff consented to the State Bar's conduct.

7 **FIFTH ADDITIONAL DEFENSE**

8 The Complaint and each and every cause of action contained therein is barred because the
9 State Bar's conduct was reasonable under the circumstances.

10 **SIXTH ADDITIONAL DEFENSE**

11 The Complaint and each and every cause of action contained therein is barred because the
12 State Bar had no discriminatory intent.

13 **SEVENTH ADDITIONAL DEFENSE**

14 The Complaint and each and every cause of action contained therein is barred to the
15 extent that plaintiff complains she was not given testing accommodations that were not
16 requested.

17 **EIGHTH ADDITIONAL DEFENSE**

18 The Complaint and each and every cause of action contained therein is barred to the
19 extent that plaintiff complains she was not given testing accommodations that were not
20 reasonable.

21 **NINTH ADDITIONAL DEFENSE**

22 The Complaint and each and every cause of action contained therein is barred to the
23 extent that plaintiff complains she was not given testing accommodations not related to
24 accommodating her disability during the examination.

25 **TENTH ADDITIONAL DEFENSE**

26 The Complaint and each and every cause of action contained therein is barred to the
27 extent that plaintiff failed to cooperate with the State Bar in reasonably accommodating her
28 disability.

ELEVENTH ADDITIONAL DEFENSE

The Complaint and each and every cause of action contained therein is barred to the extent that plaintiff's requested "accommodation" would have resulted in a fundamental alteration of the Bar Exam.

TWELFTH ADDITIONAL DEFENSE

The Complaint and each and every cause of action contained therein is barred to the extent that plaintiff's requested "accommodation" would have resulted in an undue burden on the State Bar.

THIRTEENTH ADDITIONAL DEFENSE

The Complaint and each and every cause of action contained therein is barred to the extent that plaintiff's requested "accommodation" would have created an unacceptable security risk to the integrity of the California Bar Exam.

FOURTEENTH ADDITIONAL DEFENSE

The Complaint and each and every cause of action contained therein is barred to the extent that plaintiff's requested "accommodation" would have provided her with an unfair advantage over non-disabled bar applicants rather than simply accommodating her disability.

FIFTEENTH ADDITIONAL DEFENSE

The Complaint and each and every cause of action contained therein is barred to the extent that plaintiff's requested "accommodation" was something that the State Bar had no legal power to provide.

SIXTEENTH ADDITIONAL DEFENSE

The Complaint and each and every cause of action contained therein is barred to the extent that plaintiff seeks relief that invades the inherent power of the California Supreme Court to control the admission of lawyers to the California Bar.

SEVENTEENTH ADDITIONAL DEFENSE

The Complaint and each and every cause of action contained therein is barred to the extent that plaintiff seeks to challenge her denial of admission to the practice of law in California

1 pursuant to the rule of Chaney v. State Bar of Cal., 386 F.2d 962 (1967) because plaintiff has not
2 petitioned the California Supreme Court for admission.

3 **EIGHTEENTH ADDITIONAL DEFENSE**

4 The Complaint and each and every cause of action contained therein is barred pursuant to
5 California Government Code section 815.

6 **NINETEENTH ADDITIONAL DEFENSE**

7 The Complaint and each and every cause of action contained therein is barred pursuant to
8 California Government Code section 818.4.

9 **TWENTIETH ADDITIONAL DEFENSE**

10 The Complaint and each and every cause of action contained therein is barred because the
11 State Bar otherwise has absolute immunity under California and/or federal law.

12 **TWENTY-FIRST ADDITIONAL DEFENSE**

13 The Complaint and each and every cause of action contained therein is barred by the
14 abstention doctrine.

15 **TWENTY-SECOND ADDITIONAL DEFENSE**

16 The Complaint and each and every cause of action contained therein is barred by the
17 doctrine of estoppel.

18 **TWENTY-THIRD ADDITIONAL DEFENSE**

19 The Complaint and each and every cause of action contained therein is barred by the
20 doctrine of waiver.

21 **TWENTY-FOURTH ADDITIONAL DEFENSE**

22 Plaintiff has failed, and continues to fail, to act reasonably to mitigate the damages
23 alleged in the Complaint.

24 **TWENTY-FIFTH ADDITIONAL DEFENSE**

25 Plaintiff's Second Cause of Action is barred because as a matter of law paying fees to
26 take the Bar Examination does not create a contract between plaintiff and the State Bar.

1 **TWENTY-SIXTH ADDITIONAL DEFENSE**

2 The damages sought in Plaintiff's Second Cause of Action are were neither foreseeable
3 nor negotiated by the parties, and are thus not recoverable pursuant to California Civil Code
4 section 3300.

5 **TWENTY-SEVENTH ADDITIONAL DEFENSE**

6 Any damage sustained by plaintiff, the fact and extent of which is expressly denied, was
7 either wholly or in part proximately caused by and/or contributed to by plaintiff or others,
8 whether that fault be the proximate result of intentional conduct, negligence, breach of contract,
9 or any other type of fault, of persons, firms, corporations, or entities other than the State Bar, for
10 which the State Bar is not responsible. Said intentional conduct, negligence, or fault bars
11 recovery against the State Bar or comparatively reduces the percentage of fault or negligence, if
12 any, of the State Bar.

13 **TWENTY-EIGHTH ADDITIONAL DEFENSE**

14 The Complaint and each and every cause of action contained therein is barred by
15 the statute of limitations.

16 The State Bar reserves the right to amend its Answer to the Complaint to assert such
17 additional defenses and/or applicable statutory or contractual terms, provisions, exclusions,
18 conditions or limitations as may become apparent during the continuing course of discovery in
19 this action.

20 DATED: September 14, 2007

KERR & WAGSTAFFE LLP

21
22 By _____/s_____
MICHAEL VON LOEWENFELDT

23 Attorneys for Defendant
24 The State Bar of California

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